

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Lawrence H. Thompson

Serial No. 09/637,962

Filed August 11, 2000

Art Unit 1647

Confirmation No. 8001

For THERAPEUTIC METHODS FOR TREATING SUBJECTS WITH A RECOMBINANT
ERYTHROPOIETIN HAVING HIGH ACTIVITY AND REDUCED SIDE EFFECTS

July 18, 2006

**PETITION FOR PATENT TERM ADJUSTMENT
PURSUANT TO 37 CFR §1.705(d)**

TO THE COMMISSIONER OF PATENTS,
SIR:

In response to the Issue Notification received July 5, 2006 in the above-referenced patent application, applicants respectfully request reconsideration of the patent term adjustment determination. Pursuant to 37 CFR §1.705(d), applicants submit the following statement of facts in support of this request for reconsideration.

According to the Patent Application Information Retrieval (PAIR) database regarding the instant application, the delay on the part of the Office is indicated as being 1072 days, and the delay on the part of applicant is indicated as being 400 days. Thus, according to PAIR the subject application is entitled to a 672 day patent term adjustment. Applicants believe that the applicant delay was incorrectly calculated, and should be 257 days.

Applicants submit that there was no applicant delay after March 13, 2003. However, PAIR shows an additional 143 day delay after that time. The relevant dates for consideration are as follows.

On June 16, 2003, a final Office action was mailed. On September 15, 2003, applicants filed a fully responsive amendment. No days of applicant delay result from this filing.

On November 24, 2003, an Advisory action was mailed by the Office. On December 15, 2003, applicants filed an amendment in response to the Advisory action and a Notice of Appeal. No days of applicant delay result from this filing.

On February 5, 2004, a non-final Office action was mailed because the Examiner made a new rejection not necessitated by any amendment made by applicants. An amendment in response to the non-final Office action was filed on May 5, 2004. No days of applicant delay result from this filing.

On July 22, 2004, a final Office action was mailed. Applicants filed a Notice of Appeal on October 22, 2004. No days of applicant delay result from this filing.

On November 18, 2004, an Interview Summary was mailed by the USPTO. On December 6, 2004, a Notice of Allowance was mailed by the USPTO. On March 7, 2005, applicants filed the issue fee payment, a statement regarding loss of entitlement to small entity status, and a change of correspondence address. Per page 2700-21 of the MPEP, submission of these papers after receipt of a notice of allowance does not result in days of applicant delay.

On March 29, 2005, applicants submitted a set of formal drawings in response to a telephonic request by the examiner for submission of such drawings. Although drawings can be considered a failure to engage in reasonable efforts to conclude processing of an application per page 2700-21 of the MPEP, applicants submit that this submission does not result in any days of applicant delay because the drawings were accepted by the examiner as noted in section 3 of the Notice of Allowance (copy enclosed). Therefore, applicants had no way of knowing that the formal drawings were not acceptable until notified by the examiner after payment of the issue fee.

In light of the foregoing, applicants believe that the patent term adjustment should be estimated to be 815 days calculated as the difference between a USPTO delay of 1072 days and an applicant delay of 257 days.

A terminal disclaimer was not filed in this case. Applicants note that the application was not the subject of a Request for Continued Application under 35 U.S.C. §132(b) or an interference proceeding, was not maintained in a sealed condition under

35 U.S.C. §181, and was not the subject of an appeal to the Board of Patent Appeals and Interferences.

The Commissioner is hereby authorized to charge \$200 to pay for the fee under 37 C.F.R. §1.18(e) and to charge any under payment or credit any overpayment to deposit account No. 19-1345.

Respectfully submitted,



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KMP/lam